

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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DOC #:
DATE FILED: 5-26-09

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PEARSON EDUCATION, INC.,
JOHN WILEY & SONS, INC.,
CENGAGE LEARNING, INC. AND
THE MCGRAW-HILL COMPANIES, INC.,

Plaintiffs,

-against-

SHAWN GROOMS, JENNIFER GROOMS
AND BORGASORUS BOOKS, INC. ALL
D/B/A BORGASORUS BOOKS D/B/A
BORGASORUSBOOKS.COM AND
JOHN DOES NOS. 1-5,

Defendants.
-----X

08 Civ. 7036 (DC)

ECF Case

FINAL JUDGMENT AND PERMANENT INJUNCTION
BY CONSENT

IT IS HEREBY STIPULATED and agreed by and between the parties,
conditional upon the approval of the Court, that it is

ORDERED, ADJUDGED AND DECREED that the caption in the above
referenced matter has been amended to reflect the additional Plaintiffs/Publishers; and
that the parties agree that although Publishers Pearson Education, Inc., Cengage
Learning, Inc. and The McGraw-Hill Companies, Inc. were not part of the pending
litigation filed by John Wiley & Sons Inc. under docket number 08 CV 7036, they will be
deemed to have been plaintiffs in that litigation and that the claims of Publishers Pearson
Education Inc, Cengage Learning, Inc. and The McGraw-Hill Companies, Inc., for

purposes of this Settlement Agreement and the Final Judgment and Consent Injunction will be identical to those alleged by John Wiley & Sons Inc. in the pending litigation.

ORDERED, ADJUDGED AND DECREED that defendants Borgasorus Books, Inc., Jennifer Grooms and Shawn Grooms(collectively “Borgasorus”) and Borgasorus’ agents, servants, and employees, and all those acting in concert with them, if any, are hereby PERMANENTLY ENJOINED from the sale in the United States of any Foreign Editions of the books protected by the registered copyrights and trademarks of plaintiff Pearson Education, Inc. (“Pearson”) identified on Schedules A and E hereto, the registered copyrights and trademarks of plaintiff John Wiley & Sons, Inc. (“Wiley”) identified on Schedules B and F hereto, the registered copyrights and trademarks of Cengage Learning, Inc., formerly known as Thomson Learning Inc. (“Cengage”) identified on Schedules C and G hereto, and the registered copyrights and trademarks of plaintiff The McGraw-Hill Companies, Inc. (“McGraw-Hill”), identified on schedules D and H hereto, Foreign Edition books are defined as any of the Publishers’ educational textbooks that are copyrighted under the United States Copyright Act, are lawfully made and intended only for distribution outside the United States, and are marked on the front or back cover to indicate that distribution is restricted to areas outside the United States.; and it is further

ORDERED, ADJUDGED and DECREED that Borgasorus shall upon full execution of the Settlement Agreement and Final Judgment by the parties and approval by the Court of the Final Judgment, pay forthwith Pearson, Wiley, Cengage and McGraw-Hill the amount agreed upon in the Settlement Agreement (the “Settlement Amount”) and that the Publishers agree to accept the settlement amount as an amount

agreed upon to represent statutory damages pursuant to 17 U.S.C. § 504(c)(1); and it is further

ORDERED, ADJUDGED and DECREED that the payment of the settlement amount by Borgasorus, pursuant to this final judgment and permanent injunction, to which Borgasorus has consented, is in satisfaction of valid claims of Pearson, Wiley, Cengage and McGraw-Hill against Borgasorus with respect to alleged violations of Plaintiff's rights with respect to the sale or offering for sale, including advertising and/or falsely designating the origin of Foreign Editions, as that term is defined in the Settlement Agreement), and the obligation of Borgasorus to make the above payment shall not be dischargeable as a result of any petition or application that Borgasorus may file under the laws of the United States relating to bankruptcy; and it is further

ORDERED, ADJUDGED AND DECREED that, unless Pearson, Wiley, Cengage and McGraw-Hill notify Borgasorus to make payment to another person, Borgasorus shall pay the "Settlement Amount" by check payable to Dunnegan LLC Attorney Trust Account, and sent to Dunnegan LLC, 350 Fifth Avenue, New York, New York 10118, or to such other address that William Dunnegan may provide to Borgasorus; and it is further

ORDERED, ADJUDGED and DECREED that Borgasorus shall, at the option of plaintiffs to be exercised within 10 days after entry of this order, (i) make available for pickup, any Foreign Edition books of Pearson, Wiley, Cengage and McGraw-Hill which it has already isolated for purposes of this litigation, or (ii) certify that the Foreign Edition books have been destroyed, in a recycling facility or otherwise;

and it is further agreed that any Foreign Edition books which come into the possession of Borgasorus in the future will not be sold in the United States, except that Borgasorus is permitted to sell the books to a paper recycling facility; and it is further

ORDERED, ADJUDGED and DECREED that, in addition to that set forth in the Settlement Agreement, Pearson, Wiley, Cengage and McGraw-Hill release any and all of their claims as of the date of execution of the consent to this final judgment and permanent injunction and Settlement Agreement, and Borgasorus releases any and all of his claims, if any, against Pearson, Wiley, Cengage and McGraw-Hill, except any claims for failure to comply with this final judgment and permanent injunction; and it is further

ORDERED, ADJUDGED and DECREED that any consents, notices, requests or other communications from any party to any other party, or to their respective attorneys concerning any issue arising out of or connected to the subject matter of the Settlement Agreement, the Final Judgment and permanent Injunction by Consent or the within litigation, whether required or not, must be in writing and sent by certified mail, return receipt requested or by nationally recognized express courier service or hand delivered:

- (a) If to Publishers: William Dunnegan, 350 Fifth Avenue, Suite 4909,
New York, New York 10118
- (b) If to Borgasorus: Borgasorus Books, Inc., 1404 Sachs Business
Parkway, Wentzville, Missouri 63383

ORDERED, ADJUDGED and DECREED that the Settlement Agreement and the Final Judgment and Permanent Injunction by Consent constitute the entire agreement and supersede all prior agreements and understandings, both written and oral,

of the parties with respect to the subject matter thereof, and any oral representations or modifications concerning either the Settlement Agreement and the Final Judgment and Permanent Injunction by Consent are intended to have no effect except: (a) in the case of the Settlement Agreement, unless contained in a subsequent written modification of the Settlement Agreement signed by the party to be charged; or (b) in the case of the Final Judgment and Permanent Injunction by Consent, unless contained in a subsequent final order of any court having appropriate jurisdiction therewith;

ORDERED, ADJUDGED AND DECREED that any party shall have the right to change the place to which notices shall be sent or delivered by similar notice sent or delivered in any permitted manner to each other without obtaining permission of the Court;

ORDERED, ADJUDGED AND DECREED that Borgasorus has consented to the non-financial obligations in the Settlement Agreement and in the Final Judgment and permanent Injunction by Consent based on the law governing the sale of Foreign Editions (as defined in each of these documents) as that law exists as of the date the Court signs the Judgment and Permanent Injunction by Consent. If in the future, it is determined by (a) the Publishers; (b) amendment of the United States Copyright Laws; (c) amendment of the United States Trademark Laws; (d) the Supreme Court of the United States; (e) the Second, Eighth and/or Ninth Circuit Court of Appeals in the United States, that the sale of Foreign Editions within the United States is not a violation of the United States Copyright and/or Trademark Laws, the Publishers agree that, upon receipt of notice from any of the Borgasorus parties, that they will enter into good faith

negotiations with a view toward modifying the non-financial obligations of Borgasorus to reflect the status of the law.

It is further ORDERED, ADJUDGED and DECREED that if the Publishers and Borgasorus are unable to reach a resolution therewith within sixty days of the day the Publishers receive the foregoing notice, Borgasorus may seek appropriate relief from the United States District Court for the Southern District of New York or any higher court as to such non-financial obligations. The Settlement Agreement and the Final Judgment and permanent Injunction by Consent will remain in full force and effect until such time as the parties reach a mutual agreement in writing or until upon the issuance of a court order that modifies the Settlement Agreement or the Final Judgment and Permanent Injunction by Consent or both. This provision is not intended to preclude any of the Publishers from undertaking any enforcement action with respect to the Settlement Agreement or the Final Judgment and Permanent Injunction by Consent.

ORDERED, ADJUDGED and DECREED that within 20 days of complete payment of the Settlement Amount, Pearson, Wiley, Cengage and McGraw-Hill, through their counsel, will file a satisfaction of judgment in this Court; and it is further

ORDERED, ADJUDGED and DECREED that the caption of this action is amended to reflect the correct identity of the plaintiffs; and it is further

ORDERED, ADJUDGED and DECREED that claims of Pearson, Wiley, Cengage and McGraw-Hill in this action against Borgasourus be, and hereby are, dismissed with prejudice, except that the Court shall retain jurisdiction to enforce this final judgment and

permanent injunction, and Settlement Agreement

Dated: New York, New York
May 24, 2009



U.S.D.J.

Consent to Entry

The parties hereby consent to the entry of the foregoing final judgment and permanent injunction.

Dated: New York, New York
May 27, 2009

DUNNEGAN LLC

By William Dunnegan
William Dunnegan (WD9316)
wd@dunnegan.com
Attorneys for Plaintiffs
350 Fifth Avenue
New York, New York 10118
(212) 332-8300

By Maria Klajic
John Wiley & Sons, Inc.

By _____
Pearson Education, Inc.

By _____
Cengage Learning, Inc.

By _____
The McGraw-Hill Companies, Inc.

BOEGGEMAN, GEORGE and CORDE, P.C.

By _____
Karen A. Jockimo (KJ 9021)
1 Water Street
White Plains, New York 10601
(914) 761-2252

BORGASORUS BOOKS, INC.

By _____
Jennifer Grooms

Consent to Entry

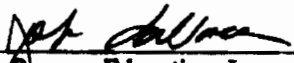
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JOHN LAVACCA, EVP, CDO.

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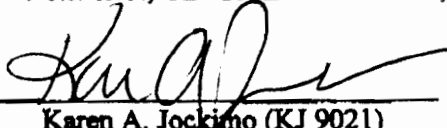
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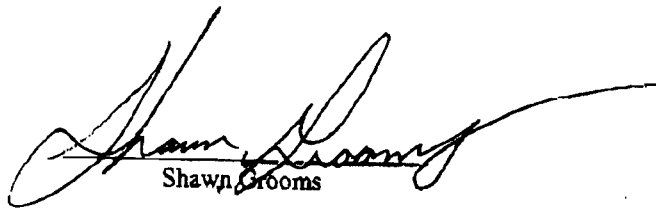
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BORGASORUS BOOKS, INC.

By 
Jennifer Grooms


Shawn Grooms

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